



Newly-adopted EU legislation in the field of Copyright

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Sabina Tsakova**

Agenda

- 1. Introduction*
- 2. Directive 2019/790 on Copyright in the DSM*
- 3. Directive 2019/789 on rules applicable to certain online transmissions and retransmissions of TV and radio programs*
- 4. Regulation 2017/1128 on cross-border portability of online content services*

May 2015 Communication **“A Digital Single Market Strategy for Europe”**

Dec 2015 **First copyright package**
Communication **“Towards a modern, more European copyright framework”**

Regulation on cross-border portability of online content services 2017/1128 (adoption June 2017)

Sept 2016 **Second copyright package (various COM proposals)**

- Implementation of the **Marrakesh Treaty** for people with print disabilities through Directive 2017/1564 and Regulation 2017/1563 (adoption September 2017)
- Directive on **online transmissions and retransmissions** of TV and radio programmes (adoption April 2019)
- Directive on **copyright in the Digital Single Market** (adoption April 2019)

Directive on Copyright in the DSM

3 key pillars:

- 1. Modernisation of exceptions*
- 2. Measures facilitating licenses*
- 3. Better-functioning copyright marketplace*

Modernisation of exceptions

Aim: to modernise copyright rules applicable to schools, universities, researchers, libraries and other cultural heritage institutions

Provision	Articles	Recitals
Text and Data Mining		
➤ TDM for scientific research	Art. 3	Rec. 8-17
➤ TDM for all users (beyond area of research)	Art. 4	Rec. 18
Illustration for Teaching	Art. 5	Rec. 19-24
Preservation of cultural heritage	Art. 6	Rec. 25-29

Measures facilitating licences (1)

Aim: To ensure wider cross border and online access for citizens to copyright protected content

Provision	Articles	Recitals
Out of commerce works	Art. 8-11	Rec. 30 - 43
Collective licensing with an extended effect	Art. 12	Rec. 44-50
Access to and availability of AV works on VOD platforms	Art. 13	Rec. 51-52
Works of visual art in the public domain	Art. 14	Rec. 53

Measures facilitating licences (2)

Negotiation mechanism (Article 13)

- Negotiation mechanism to be set up by Member States to facilitate the licensing of films on VoD platforms
 - *Objective:* improve the availability of European audiovisual works on VoD platforms
 - Negotiation mechanism open to parties (VoD platform, producers, distributors) wishing to conclude an agreement, on a *voluntary* basis
 - Member States to identify or create an impartial body or mediators with relevant experience to provide assistance with negotiation and help reaching licensing agreements

Better-functioning copyright market place

Aim: achieving a fairer, well-functioning market place for copyright and address:

- issues faced upstream by RHs when trying to licence their content to online service (Publisher's right and Value Gap)
- issues faced downstream by creators when negotiating contracts for the exploitation of their works (Remuneration)

Provision	Articles	Recitals
Rights in publications		
➤ Protections of press publications	Art. 15	Rec. 54-59
➤ Claim to fair compensation	Art. 16	Rec. 60
Use of protected content by online content sharing service providers (OCSSP)	Art. 17	Rec. 61-71

Better-functioning copyright market place

What	Articles	Recitals
Fair remuneration in exploitation contracts of authors and performers		
➤ Principle of appropriate and proportionate remuneration	Art. 18	Rec. 71-72
➤ Transparency obligation	Art. 19	Rec. 74-77
➤ Contract adjustment mechanism	Art. 20	Rec. 78
➤ Alternative dispute resolution procedure	Art. 21	Rec. 79
➤ Right of revocation	Art. 22	Rec. 80

Better-functioning copyright market place

Related right for press publishers (Article 15)

- Applicable to online uses by information **society service providers**
- Carve-out of
 - Hyperlinking
 - Use of individual words or very short extracts
 - Private or non-commercial uses by individual users
- Term of protection: **2 years**
- No retrospective protection
- Does not affect rights of authors
- Appropriate share of revenues for authors

Better-functioning copyright market place: **Article 17**

Objectives of this provision

Online Content Sharing Service Providers (OCSSP)

➤ What is an OCSSP?

Article 2(6)

- *Main or one of the main purpose: to store and give the public access to a large amount of © content uploaded by its users*
- *Which it organises and promotes for profit-making purposes*

➤ Exclusion of certain services

- Not-for profit online encyclopaedias
- Not-for-profit educational and scientific repositories
- Open source software developing and sharing platforms
- Electronic communication service providers
- Business-to-business cloud services and cloud services which allow users to upload content for their own use

An OCSSP

- **Primarily liable when it gives access**
- **Authorisation required (e.g. licensing agreement)**
- **Licences concluded will cover certain users**
- **Safe Harbour under 14(1) ECD does not apply in this specific case**

Article 17(1) "[...] an online *content sharing service provider* performs an act of *communication to the public*...for the purposes of this Directive when it gives the public access to copyright –protected works...uploaded by its users "

Article 17(1) "An OCSSP shall therefore obtain an **authorisation** from the rightholders..."

Article 17(2) "The authorisation shall also **cover acts carried out by users** of the service, falling within the scope of Art. 3(1) Infosoc, when they are not acting on a commercial basis or where their activity does not generate significant revenues"

Article 17(3) "When an OCSSP ...the limitation of liability established in **Art.14(1)** of Directive 2000/31 shall not apply to the situations covered by this article"

If no authorisation is granted:

➤ Liability mitigation mechanism

Article 17(4) and (5)

*"If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, **unless** the service providers demonstrate that they have*

(a) made best efforts to obtain an authorisation, and

*(b) made, in accordance with high industry standards of professional diligence, **best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with **the relevant and necessary information****; and in any event*

*(c) **acted expeditiously**, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from, their websites the notified works or other subject matter, and made best efforts to prevent their future uploads in accordance with point (b)."*

Assessment: *In the light of the **principle of "proportionality"** – taking into account, among others: the type, audience and size of the service and the type of works; the availability of suitable and effective means and their cost for service provider.*

➤ **Lighter regime for certain companies** - Article 17(6)

Which companies?

- **<3 years in the EU**
- Annual turnover below EUR **10 million**

What?

- They will need to make best efforts to obtain an authorisation and only have to **act expeditiously** to remove the unauthorised works, notified by the rightholders, from their website.
- When the audience reaches **5 million** monthly unique visitors: need to make their best efforts to prevent further uploads of notified works for which relevant and necessary information has been provided.

Safeguards for users (1)

Article 17(7) *The cooperation between OCSSP and RHs shall not result in the prevention of the availability of works uploaded by users, which do not infringe copyright and related rights, including where such works are covered by an exception or limitation.*

*MS shall ensure that users in each MS are able to rely on any of the following exceptions when uploading and making available content generated by users on platforms: (a) **quotation, criticism, review**, (b) **use for the purpose of caricature, parody or pastiche***

Article 17(9) *OCSSP have to put in place an "effective and expeditious complaint and redress mechanism available to users of the services" to contest unjustified removal of their content*

Safeguards for users (2)

- **Art. 17(7)**

- Currently optional exceptions under Infosoc Directive 2001/29/EC
- Becomes mandatory in the context of Art. 17
- Important for the freedom of expression online

- **Art.17(9)**

- Robust **complaint and redress mechanism** in case of wrongfully blocked or removed content :
 - Justification by RHs
 - Complaints processed without undue delay
 - Decision to disable access or to remove content shall be subject to human review
- Out-of-court mechanisms shall be available for the settlement of disputes

- **Article 17(8) and 17(9)**

Next steps regarding Article 17

Article 17(10)

- **Stakeholder dialogue**-> to discuss best practices for cooperation between OCSSP and rightholders
- **Commission to issue guidance** on the application of Article 17, in particular regarding cooperation between OCSSP and rightholders

Better-functioning copyright market place

Remuneration of authors and performers (Articles 18-22)

- **Principle of appropriate and proportionate remuneration for authors and performers (Art. 18)**
- **Transparency obligation (Art. 19)**
 - To receive up to date, relevant and comprehensive information on the exploitation of their works
 - On a regular basis, at least once a year
 - From licensees and sub-licensees

Better-functioning copyright market place

Remuneration of authors and performers

- **Contract adjustment mechanism (Art.20)**
 - Claim for additional, appropriate and fair remuneration
 - When the remuneration originally agreed turns out to be disproportionately low
- **Voluntary alternative dispute resolution procedure (Art. 21)**
- **Right of revocation (Art. 22)**
 - When licence or transfer of rights on exclusive basis
 - Where lack of exploitation

Directive on Online transmissions and retransmissions

- *Objective:* facilitate the clearance of rights for online transmissions of TV and radio programmes by broadcasters and for retransmissions by means other than cable + ensure legal certainty and remuneration for direct injection
- *Main provisions:*
 - Application of the **Country of Origin principle** to the licensing of certain TV and radio programmes provided by broadcasters on their **ancillary online services**;
 - **Mandatory collective management** for **retransmissions** of TV and radio programmes by means other than cable;
 - Provisions on **direct injection**.

Online transmissions of broadcasters

- Country of origin principle for the licensing of broadcasters' **ancillary online services** (simulcasting, catch-up services)
 - Scope: applies to radio programmes and, for television programmes, to **news and current affairs** and **fully financed own productions** of the broadcasting organisations (exclusion of TV broadcasts of sports events)
- Need to take into account all aspects of the ancillary online service when determining the **licence fees**
- **Contractual freedom** of broadcasters / right holders not affected – subject to applicable EU rules

Retransmissions of TV and radio programs

- **Mandatory collective management for retransmissions by means other than cable** (e.g. IPTV, satellite, digital terrestrial, mobile) - including for services provided over the **open internet** to the extent the retransmission is carried out in a **managed environment** (Article 4(1))
- Broadcasters can directly license their rights to retransmission service providers (Article 5(1))

Good faith negotiations (Article 5(2)) and possibility to call assistance of mediators (Article 6)

Direct injection

- Two situations:
 - Transmission of the signals through direct injection **without any parallel transmission by the broadcaster:** broadcasters and signal distributors participate in a **single act of communication to the public** for which they need to obtain authorisation from right holders; possibility for MS to apply mandatory collective management for the rights clearance by the signal distributor (Article 8(1) and (2))
 - Transmission of the signals through direct injection and **a parallel transmission by the broadcaster:** the rules on retransmissions apply (including for a cable retransmission)

Portability Regulation (1)

Regulation (EU) 2017/1128 on cross-border portability of online content services adopted on 14 June 2017 and directly applicable in all Member States since 1 April 2018

The Regulation **enables consumers** who buy or subscribe at home to online content services - to watch films or sporting events, listen to music, download e-books or play games - to continue accessing these services without additional costs when they travel or stay temporarily in other EU countries.

Portability Regulation (2)

Providers of **paid online content services are obliged to provide cross-border portability to their subscribers**. They have to provide access to the same content, on the same range and number of devices, for the same number of users and with the same range of functionalities – without additional charges (Article 3)

They do not need to acquire licences for other territories where the subscribers stay temporarily (Article 4)

There is an **opt-in possibility for free online content services** (Article 6)

A number of **safeguards** are in place, e.g. service providers have to verify the subscriber's Member State of residence at the conclusion and renewal of the contract and in case of reasonable doubt (Article 5)



Thank you!

Sabina Tsakova
Copyright Unit (I2)
DG CNECT
sabina.tsakova@ec.europa.eu